

LEVINE, BLASZAK, BLOCK & BOOTHBY

1300 CONNECTICUT AVENUE, NW

SUITE 500

WASHINGTON, D.C. 20036-1703

(202) 223-4980

FAX (202) 223-0833

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

September 8, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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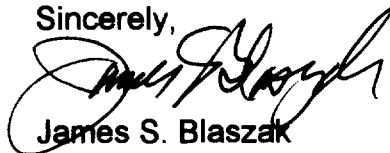
RE: In the Matter of AT&T Contract Tariff No. 374
CC Docket No. 91-213 95-133

Dear Mr. Caton:

Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, attached please find an original and 4 copies of the Comments of the Ad Hoc Telecommunications Users Committee, in the above captioned matter. Please date stamp the additional copy and return it with our messenger.

If you have any questions regarding this filing, please do not hesitate to call.

Sincerely,


James S. Blaszak

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)

) Transmittal Nos. CT 2952 and CT 3441

) CC Docket No. 95-133

) AT&T Contract Tariff No. 374

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Comments on AT&T's Direct Case

The Ad Hoc Telecommunications Users Committee ("Ad Hoc Committee") hereby submits its comments on the Direct Case that AT&T filed in the above-captioned docket on August 25, 1995.

The Ad Hoc Committee takes no position on the specific issues which the Commission designated for investigation in this docket.¹ The resolution of these issues will depend on the relevant facts, all of which the Ad Hoc Committee does not know. For example, AT&T argues that the subject tariff revisions do not adversely affect The Furst Group ("TFG") because the revisions lower the rates that TFG pays for AT&T's service and do not otherwise make other terms of the contractual relationship between TFG and AT&T more restrictive with respect to TFG's interests.² TFG may have a different view

¹ The Commission designated the following issues for investigation:
I. Is AT&T required to satisfy the "substantial cause" doctrine before one or more of the tariff revisions proposed in Transmittal Nos. CT 2952 and CT 3441 become effective?

II. If the resolution of issue I is in the affirmative, has AT&T shown substantial cause to make the revisions to Contract Tariff No. 374 proposed in Transmittal Nos. CT 2952 and CT 3441.

In the Matter of AT&T Contract Tariff 374, CC Docket 95-133, DA 95-1784 (rel. August 11, 1995).

² Direct Case of AT&T Corp., at 6-7.

regarding AT&T's assertions. The Ad Hoc Committee is not in a position to sort out conflicting arguments about the contractual relationship between TFG and AT&T.

The Ad Hoc Committee, however, is concerned about this case because of the possibility that AT&T may be attempting to persuade the Commission to render holdings that go beyond those which appear necessary to resolve the issues designated for investigation in this docket and that could establish precedent that then could affect contractual relationships between AT&T and other customers. AT&T seems to argue that the subject tariff revisions reduce tariff rates and do not otherwise restrict the customer's rights in other contractual the terms and conditions, and, thus, do not burden, i.e., adversely affect, TFG. However, it is possible that the rate revisions filed by AT&T, while lower than the effective rates, are not as low as the rates that the contract would require. AT&T seems to contend that even if the subject rate reductions are not as large as those that the contract between the parties would require, the inconsistency implied by the tariff filing does not burden the customer and thus does not require a substantial cause showing.³ AT&T then argues that even if tariff revisions are inconsistent with contracts, such inconsistency should not be considered in assessing whether the revisions are just and reasonable.⁴

³ *Id.*, at 7.

⁴ *Id.*, at 8.

The Ad Hoc Committee believes that AT&T has in its pleading perhaps oversimplified the problem presented in this case. The Ad Hoc Committee would not object to tariff filings that reduce rates, provided that the rates were not otherwise unlawful. However, the Commission should avoid making a finding that the rates produced by such revisions are just and reasonable, particularly if they are less than the reductions to which AT&T might be contractually obligated. A finding of justness and reasonableness in such circumstances would seem to foreclose a subsequent ruling on a customer complaint that the same rates must be further reduced to match contractual requirements. The Commission could not intend to create such a condition, and the Ad Hoc Committee respectfully urges the Commission to take care not to unintentionally create such undesirable precedent in this case.

The Ad Hoc Committee also takes issue with AT&T's assertion that inconsistency of tariff and contract provisions can be given no weight in assessing the reasonableness of carrier tariff filings.⁵ On the one hand AT&T implicitly agrees that the substantial cause test applies if a tariff filing has negative effects on a customer⁶, but that inconsistency between proposed tariff revisions and contractual provisions is irrelevant in determining whether the proposed revisions are just and reasonable.⁷ The Ad Hoc Committee does not argue with the proposition that once a tariff provision becomes effective, it

⁵ *Id.*

⁶ *Id.*, at 5.

⁷ *Id.*, at 8.

supersedes inconsistent contractual language, so long as the tariff provision is effective. However, that is a long way from a conclusion that the Commission cannot evaluate inconsistencies between proposed tariff revisions and contract requirements in considering whether proposed tariff revisions should be suspended, and perhaps later found unlawful because not adequately justified under the substantial cause test. It is also a long way from a position which would preclude the Commission from considering such inconsistencies when evaluating the lawfulness of tariff provisions after they have become effective. Indeed, the Commission must evaluate alleged inconsistencies when considering claims that proposed and effective tariff revisions are inconsistent with contractual commitments. Failure to consider such alleged inconsistencies would eviscerate the substantial cause test.

Failure to consider whether tariff revisions are inconsistent with contractual commitments would also be inconsistent with the Commission's recent explanation of the substantial cause test in the *Competition in the Interstate Interexchange Marketplace*, CC Docket No. 90-132, FCC 95-2, released February 17, 1995. Therein the Commission affirmed that the substantial cause test applies to tariff revisions that alter material terms and conditions of a long-term contract, and that the Commission would apply the test, "not only to initial review of AT&T's tariffs but also to any post-effective tariff review and to complaints as well." *Competition in the Interstate Interexchange Marketplace, supra*, at paragraph 23 and note 50. AT&T's arguments appear to take issue with the Commission's recent teachings regarding substantial cause

and perhaps implicitly seek a change in Commission policy. AT&T, however has provided no good reason for such a change; and the Commission certainly should not render a decision in a narrow tariff investigation which would change policy established in general rulemaking.

In view of the foregoing, the Ad Hoc Committee respectfully requests that the Commission (a) limit its decision in the foregoing proceeding to the facts of the subject dispute and (b) not undermine the utility of the substantial cause test as explained in *Competition in the Interstate Interexchange Marketplace, supra*, in protecting the interests of customers in long-term service agreements.

Respectfully submitted,

Ad Hoc Telecommunications Users
Committee

By: 

James S. Blaszak
Levine, Blaszak, Block & Boothby
1300 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20036-1703
202-223-7800

September 8, 1995

Its Attorneys

Certificate of Service

I, Einar Torbjornsen, hereby certify that true and correct copies of the Comments of the Ad Hoc Telecommunications Users Committee in the Matter of AT&T Contract Tariff No. 374, on this 8th day of September, 1995 via hand delivery, or first class mail, upon the following persons:

Kathleen M.H. Wallman*
A. Richard Metzger*
Melissa W. Newman*
Geraldine Matisse*
David A. Nall*
Thomas G. David*
Tariff Division,*
Common Carrier Bureau
Federal Communications Commission
Room 544
1919 M Street, NW
Washington, D.C. 20554

ITS, Inc.*
2100 M Street, NW
Suite 140
Washington, D.C. 20037

Richard M. Firestone
Arnold & Porter
555 12th Street, NW
Washington, D.C. 20004

Richard R. Meade
Daniel Start
David J. Ritchie
AT&T
Room 3250H3
295 North Maple Avenue
Basking Ridge, N.J. 07920



Einar Torbjornsen

* By hand delivery.

September 8, 1995